

Chapter 3: Custody & Detention Pending Preliminary Hearing or Arraignment

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In this chapter. . .

This chapter discusses the required procedures immediately following the apprehension of a juvenile for a criminal or status offense. It deals with the custody, notification, and detention requirements prior to a preliminary hearing in a delinquency case or an arraignment in a criminal case. Detention of a juvenile following a preliminary hearing or arraignment is also discussed in this chapter. A table summarizing permitted places of detention of juveniles may be found at Section 3.12.

Detention is also discussed in other portions of this benchbook. See Section 5.12 (detention following preliminary hearings in delinquency proceedings), Section 10.10 (post-disposition detention pending return to

placement), and Section 13.3 (detention pending a probation violation proceeding in delinquency cases). Custody and detention pending hearings in personal protection order (PPO) actions is discussed in Sections 15.18–15.19.

Note on court rules. On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and “traditional waiver” proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998).

3.1 Taking Temporary Custody of or “Lodging” a Juvenile Pending Preliminary Hearing

MCL 712A.14, MCR 3.933, and MCR 3.934 discuss the procedures to follow when taking a juvenile into temporary custody and when “lodging” or detaining a juvenile pending a preliminary hearing in the Family Division. The decision to detain a juvenile pending a preliminary hearing in a delinquency case is one only the court can make. See MCR 3.903(B)(1) (detention means court-ordered removal of a juvenile from parental custody pending a hearing or further order). These procedures apply whenever a juvenile has committed an “offense.” Under MCR 3.903(B)(3), “offense by a juvenile” includes a violation of a criminal law or ordinance, violation of a traffic law, or commission of a status offense.

3.2 The “Immediacy Rule”

The so-called “immediacy rule” is contained in MCL 764.27. That statute states in relevant part:

“Except as otherwise provided in [MCL 600.606], if a child less than 17 years of age is arrested, with or without a warrant, the child shall be taken immediately before the family division of circuit court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and file, or cause to be made and filed, a petition against the child as provided in [the Juvenile Code].”

Unless the prosecuting attorney has decided to proceed under the “automatic waiver” statute, MCL 600.606, a police officer who arrests a child less than 17 years of age must immediately take that child before the Family Division of the county where the offense was allegedly committed and file or cause to be filed a delinquency petition. MCL 764.1f(1) states that “[i]f the prosecuting attorney has reason to believe”^{*} that a juvenile between the ages of 14 and 17 has committed a “specified juvenile violation,” he or she may authorize the filing of a complaint and warrant with a magistrate concerning the juvenile. In the absence of an authorization from the prosecuting attorney, the juvenile must be brought to the Family Division or to a designated facility if the court is not open. *People v Brooks*, 184 Mich App 793, 797–98 (1990), *People v Spearman*, 195 Mich App 434, 443–45 (1992), overruled on other grounds 443 Mich 23 (1993), and MCR 3.933(A). Pursuant to MCR 3.934(B)(2), each Family Division must designate a person whom an officer may contact to obtain permission to temporarily detain a juvenile when the court is not open. That rule states:

“The court must designate a judge, referee or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing.”

Often the juvenile who becomes the subject of the “automatic waiver” procedure is initially detained on a juvenile complaint, upon authorization to detain from a court representative (usually the referee on duty). Typically, when the juvenile is apprehended at night, the police present the complaint to the prosecutor the next morning, and the prosecutor then writes the criminal complaint and warrant rather than a juvenile petition. The juvenile is then arraigned in district court, and the juvenile case is “closed.”^{*}

Police officers may stop at the police station to complete booking procedures, type a delinquency petition, and, as required by statute, fingerprint the juvenile. *People v Hammond*, 27 Mich App 490, 493–94 (1970), *People v Coleman*, 19 Mich App 250, 253–54 (1969), overruled on other grounds 41 Mich App 116 (1972), and *People v Morris*, 57 Mich App 573, 575–76 (1975). MCL 28.243(1) requires the police to take the fingerprints of a juvenile arrested for an offense that if committed by an adult would be a felony, criminal contempt of court, or a misdemeanor punishable by 93 days’ incarceration or more. See also MCR 3.923(C), which provides the Family Division discretion to permit fingerprinting or photographing, or both, of any minor concerning whom a petition has been filed.^{*}

In *People v Roberts*, 3 Mich App 605, 613 (1966), the Court of Appeals noted that the right of law enforcement officers to question a juvenile is limited by the constitutional and statutory safeguards applicable to juveniles:

^{*}See, however, MCL 764.1a (magistrate may issue a warrant only after finding “reasonable” or “probable” cause that the accused committed an offense).

^{*}See Chapters 20–22 for a complete discussion of “automatic waiver” proceedings.

^{*}See Sections 25.11–25.13 for a more complete discussion of fingerprinting and photographing juveniles.

*See Section 7.5 for discussion of the admissibility of statements taken from a juvenile following a violation of a juvenile's statutory or constitutional rights.

“The police may have a right to bring a youth to police headquarters for investigation, but when he becomes a prime suspect, then it is time for the police to comply with the constitutional and statutory safeguards due a young defendant. We conclude that the right to question a suspect extends to a juvenile as well as to an adult and may be done under certain protective circumstances in a police station. Such compliance is absolutely and immediately necessary at the moment when the search for knowledge turns from investigation to accusation.”*

3.3 Obtaining Custody of a Juvenile Without a Family Division Order

A. Obligations of Officer Immediately After a Juvenile Is Taken Into Custody

MCL 712A.14(1) provides that a police officer, sheriff, deputy sheriff, county agent, or probation officer may, without a court order, take into custody any juvenile who is found violating any law or ordinance; whose surroundings are such as to endanger the juvenile's health, morals, or welfare; or who is violating or has violated a PPO or valid foreign protection order. After apprehending the juvenile, the officer or agent must immediately attempt to notify the juvenile's parent or parents, guardian, or custodian. While awaiting arrival of the parent or parents, guardian, or custodian, the juvenile must not be held in a detention facility unless the juvenile can be isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Note that unlike criminal cases, a probable-cause determination need not be made prior to taking temporary custody of a child pending investigation and preliminary hearing. See *In re Albring*, 160 Mich App 750, 756–57 (1987).

MCR 3.933(D) mirrors the language contained in MCL 712A.14(1) on separation of juveniles from adult prisoners. That rule states:

“While awaiting arrival of the parent, guardian, or legal custodian, appearance before the court, or otherwise, the juvenile must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.”

“‘Legal Custodian’ means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state. MCR 3.903(A)(13). ‘Guardian’ means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state

under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202.” MCR 3.903(A)(11).

The federal regulations implementing the Juvenile Justice & Delinquency Prevention Act, 42 USC 5601 et seq., provide useful definitions when determining what constitutes “any verbal, visual, or physical contact with an adult prisoner.” 28 CFR 31.303(d)(1)(i) states in relevant part:

“The term ‘contact’ includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.”

B. Obligations of Officer After Notification or Attempt to Notify Parent, Guardian, or Legal Custodian

MCR 3.933(A)(1)–(3) discuss in detail the procedures that must be followed by an officer following the notification or attempt to notify the juvenile’s parent, guardian, or legal custodian. These rules state in part:

“(A) **Custody Without Court Order.** When an officer apprehends a juvenile for an offense without a court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program,* and does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:

- (1) issue a citation or ticket to appear at a date and time to be set by the court and release the juvenile;
- (2) accept a written promise of the parent, guardian, or legal custodian to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent, guardian, or legal custodian; or

*See Section 4.4 for a detailed explanation of the Juvenile Diversion Act.

(3) take the juvenile into custody and submit a petition”

“Officer” means a government official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor. MCR 3.903(A)(16).

C. Factors to Consider When Deciding Whether Juvenile Should Be Released From Custody

MCR 3.933(A)(3)(a)–(b) set out the factors the officer should consider in deciding whether to maintain custody of the juvenile. The officer should take the juvenile into custody and submit a petition under MCR 3.933(A)(3) if either of the following circumstances exist:

“(a) the officer has reason to believe that because of the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or

“(b) a parent, guardian, or legal custodian cannot be located or has refused to take custody of the juvenile.”

MCL 712A.14(2) adds that if the juvenile is not released, the juvenile and his or her parents, guardian, or custodian must immediately be brought before the court for a preliminary hearing. At the conclusion of the preliminary hearing, the court will either authorize the petition to be filed or will dismiss the petition and release the juvenile.

D. Obligation to Notify Family Division If Juvenile Is Not Released From Custody

MCR 3.933(C)(1)–(3) require the officer or agent taking custody of the juvenile to immediately contact the court if:

“(1) the officer detains the juvenile,

“(2) the officer is unable to reach a parent, guardian, or legal custodian who will appear promptly to accept custody of the juvenile, or

“(3) the parent, guardian, or legal custodian will not agree to [sign a written promise to bring the juvenile to court].”

E. Additional Obligations of Officer If Juvenile Is Not Released

MCR 3.934(A)(1)–(4) set forth four obligations of an officer or agent when a juvenile is apprehended and not released and the prosecutor has not authorized the filing of a complaint and warrant charging the juvenile as an adult pursuant to the “automatic waiver” statute. The officer or agent must:

“(1) forthwith* take the juvenile

(a) before the court for a preliminary hearing, or

(b) to a place designated by the court pending the scheduling of a preliminary hearing;

“(2) ensure that the petition [or a complaint] is prepared and presented to the court;

“(3) notify the parent, guardian, or legal custodian of the detaining of the juvenile, and of the need for the presence of the parent, guardian, or legal custodian at the preliminary hearing;

“(4) prepare a custody statement* for submission to the court including:

(a) the grounds for and the time and location of detention, and

(b) the names of persons notified and the times of notification, or the reason for failure to notify.”

*The officer may complete booking procedures and fingerprint the juvenile. See Section 3.2, above.

*See SCAO Form JC 02.

F. Obligations of Officer If Family Division Is Not Open

MCR 3.934(B)(1) states that when a juvenile is apprehended without a court order and the court is not open, the juvenile may be detained pending a preliminary hearing if no parent, guardian, or legal custodian can be located, or if the juvenile or the offense meets the criteria set forth in MCR 3.935(D)(1).

MCR 3.935(D)(1) allows for detention if one or more of the following circumstances are present:

“(a) the offense alleged is so serious that release would endanger the public safety;

“(b) the juvenile charged with an offense that would be a felony if committed by an adult will likely commit another offense pending trial, if released, and

*But see
Section 3.8,
below, for
limitations on
detention of
status
offenders.

(i) another petition is pending against the juvenile,

(ii) the juvenile is on probation, or

(iii) the juvenile has a prior adjudication, but is not under the court's jurisdiction at the time of apprehension;

“(c) there is a substantial likelihood that if the juvenile is released to the parent, guardian, or legal custodian, with or without conditions, the juvenile will fail to appear at the next court proceeding;

“(d) the home conditions of the juvenile make detention necessary;

“(e) the juvenile has run away from home;*

“(f) the juvenile has failed to remain in a detention facility or nonsecure facility or placement in violation of a court order; or

“(g) pretrial detention is otherwise specifically authorized by law.”

Pretrial detention is specifically authorized by MCL 712A.15(2). Several of this statute's provisions have been incorporated into MCR 3.935(D), but the following provisions have not and therefore also allow for detention pending a hearing:

“(b) Those who have a record of unexcused failures to appear at juvenile court proceedings.

“(f) Those who have allegedly violated a personal protection order and for whom it appears there is a substantial likelihood of retaliation or continued violation.”

In *Schall v Martin*, 467 US 253 (1984), the United States Supreme Court upheld the constitutionality of a state's “preventive detention” statute, which allowed for pretrial detention if there was a serious risk of the juvenile committing another crime before the next court hearing.

Pursuant to MCR 3.934(B)(2), each Family Division must designate a person whom an officer may contact to obtain permission to temporarily detain a juvenile when the court is not open. That rule states:

“The court must designate a judge, referee, or other person who may be contacted by the officer taking a

juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing.”

Note: “Court intake workers,” referees, or detention personnel often make the initial detention determination. Courts may wish to promulgate a local administrative order meeting the requirements of MCR 3.934(B)(2). A copy of the administrative order may then be given to each law enforcement agency in the court’s geographic jurisdiction.

G. Emergency Removal of Indian Children Charged With Status Offenses

MCR 3.980(B), dealing with emergency removal, provides that an Indian child who resides or is domiciled on a reservation but temporarily located off the reservation shall not be removed from a parent or Indian custodian unless the removal is to prevent imminent physical harm to the child. The emergency removal must be terminated when it is no longer necessary to prevent immediate physical damage or harm to the child. 25 USC 1922. An Indian child not residing or domiciled on a reservation may be temporarily removed if reasonable efforts have been made to prevent removal of the child, and continued placement with the parent or Indian custodian would be contrary to the welfare of the child. 25 USC 1922 and MCR 3.980(B).

*See Section 2.3 for a definition of status offenses.

3.4 Detention When Family Division Issues an Order to Apprehend a Juvenile

The Family Division may issue an order* to apprehend a juvenile in certain circumstances. Like an arrest warrant for an adult, the Family Division’s order may only issue upon probable cause and must specify the juvenile and the place where the juvenile may be found. MCL 712A.2c states as follows:

*See SCAO Form JC 05.

“The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is absent without leave from an institution or facility to which he or she was committed under [MCL 712A.18], has violated probation, has failed to appear for a hearing on a petition charging a violation of [MCL 712A.2], is alleged to have violated a personal protection order issued under [MCL 712A.2(h)], or is alleged to have violated a valid foreign protection order. The order shall set forth specifically the identity of the juvenile sought and the house, building, or other location or place where there is probable cause to believe the juvenile is to be found. A person who interferes* with the lawful

*See also MCL 722.151, which prohibits aiding and abetting violation of a Family Division order and concealing runaways.

attempt to execute an order issued under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.”

MCR 3.933(B) specifies that the court may issue an order to apprehend a juvenile upon probable cause that he or she has committed an offense. That rule states as follows:

“(B) Custody With Court Order. When a petition is presented to the court, and probable cause exists to believe that a juvenile has committed an offense, the court may issue an order to apprehend the juvenile. The order may include authorization to:

- (1) enter specified premises as required to bring the juvenile before the court, and
- (2) detain the juvenile pending preliminary hearing.” MCR 3.933(B)(1)–(2).

Probable cause to issue an arrest warrant exists if the facts and circumstances within the arresting officer’s knowledge are sufficient to warrant a prudent person in believing that the accused had committed or was committing an offense. *Beck v Ohio*, 379 US 89, 91 (1964).

3.5 Time Requirements for Preliminary Hearings and Arraignments When Juvenile Is Detained

*See Sections 5.11 for the requirements for preliminary hearings.

A preliminary hearing* in a juvenile delinquency case is the “functional equivalent” of an arraignment in a criminal case. *In the Matter of Sylvester Wilson*, 113 Mich App 113, 121 (1982). MCR 3.935(A)(1) states that a preliminary hearing “must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, as defined in MCR 8.110(D)(2), or the juvenile must be released.”

Under MCR 3.935(A)(2)(a)–(b), the court may adjourn the preliminary hearing for up to 14 days:

- “(a) to secure the attendance of the juvenile’s parent, guardian, or legal custodian or of a witness, or
- “(b) for other good cause shown.”

In both prosecutor-designated and court-designated cases, if a juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding

Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. MCR 3.951(A)(1)(a) and 3.951(B)(1)(a).

If the prosecuting attorney has authorized the filing of a complaint and warrant under the “automatic waiver” procedure, a juvenile in custody must be taken before a magistrate for arraignment. MCR 6.907(A). The juvenile must be released if arraignment has not commenced:

“(1) within 24 hours of the arrest of the juvenile; or

“(2) within 24 hours after the prosecuting attorney authorized the complaint and warrant during special adjournment pursuant to MCR 3.935(A)(3), provided the juvenile is being detained in a juvenile facility.” MCR 6.907(A)(1)–(2).

3.6 Special Adjournments to Allow Prosecutor to Decide Whether to Proceed Under the “Automatic” Waiver Statute for “Specified Juvenile Violations”

The Family Division may grant special adjournments when a juvenile between 14 and 17 years of age is alleged to have committed a “specified juvenile violation.” MCR 3.935(A)(3).*

*“Specified juvenile violations” are listed in Section 2.6.

MCR 3.935(3)(a) states:

“On a request of a prosecuting attorney who has approved the submission of a petition with the court, conditioned on the opportunity to withdraw it within 5 days if the prosecuting attorney authorizes the filing of a complaint and warrant with a magistrate, the court shall comply with subrules (i) through (iii).”

If the prosecuting attorney has so requested, the court must adjourn the preliminary hearing for up to five days to give the prosecuting attorney an opportunity to determine whether to file a complaint and warrant pursuant to MCL 764.1f, or to unconditionally approve the filing of a petition in the Family Division. MCR 3.935(A)(3)(a)(i).

MCR 3.935(A)(3)(a)(ii)–(iii) add that during a special adjournment, the court must defer a decision regarding whether to authorize the filing of a petition and must release the juvenile pursuant to MCR 3.935(E) or detain the juvenile pursuant to MCR 3.935(D).*

*See Sections 5.12–5.13 for a discussion of detention considerations.

MCR 3.935(A)(3)(b) sets forth the procedures when the prosecuting attorney has not authorized the filing of a complaint and warrant during a “special adjournment”:

“If, at the resumption of the preliminary hearing following special adjournment, the prosecuting attorney has not authorized the filing with a magistrate of a criminal complaint and warrant on the charge concerning the juvenile, approval of the petition by the prosecuting attorney shall no longer be deemed conditional and the court shall proceed with the preliminary hearing and decide whether to authorize the petition to be filed.”

*See Chapters 17–19 (designated proceedings) and Chapter 16 (“traditional” waiver).

MCR 3.935(A)(3)(c) adds that the prosecuting attorney’s use of the “special adjournment” procedure does not preclude the prosecuting attorney from filing a motion for “traditional” waiver under MCR 3.950. Presumably, the rule does not preclude the prosecuting attorney from designating the case under MCR 3.951(A)(3)(a).*

*See Section 20.6(A) for a more detailed discussion of the time requirements for preliminary examinations.

If the prosecuting attorney files a complaint and warrant in district court, an arraignment must be held, and following the arraignment, the district court must set a date for the juvenile’s preliminary examination within the next 14 days. The period consumed by the special adjournment, *up to three days*, must be deducted from the 14 days allowed for conducting the preliminary examination following arraignment. MCR 6.907(C)(2).*

3.7 Places of Detention for Alleged Juvenile Delinquents

As a general rule, a juvenile must be detained in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the statutory requirements of MCL 712A.15 and MCL 712A.16. MCR 3.935(D)(4). Following the filing of a complaint, petition, supplemental petition, petition for revocation of probation, or supplemental petition alleging a PPO violation, the court may detain a juvenile in a designated facility. MCL 712A.15(1). MCL 712A.14(3)(d) also allows the court to place a juvenile in “a suitable place of detention” if a petition is authorized following preliminary hearing. MCR 3.903(B)(1) broadly defines “detention” to include “court-ordered removal of a juvenile from the custody of a parent, guardian, or legal custodian. . . .” This definition allows for placement in a non-secure facility or foster home.

If a juvenile under the age of 17 is taken into custody or detained, “the juvenile shall not be confined in any police station, prison, jail, lock-up, or reformatory, or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons.” MCL 712A.16(1).

*See Section 3.3(A), above, for definitions of “sight” and “sound” contact.

However, except as provided for status offenders, a juvenile 15 years of age or older whose habits or conduct are considered a menace to other children, or who might not otherwise be safely detained, on order of the court, may be placed in a jail or other place of detention for adults, but in a room or ward separate from adults, and for a period not to exceed 30 days, unless longer detention is necessary for the service of process. MCL 764.27a(2) creates

the additional restriction that juveniles confined in a jail or other place of detention for adults must be placed in a room or ward out of sight and sound of adults.*

MCL 712A.16(2)(c) gives the court authority to place a 17 year old in a county jail if the juvenile is kept “in a room or ward separate and apart from adult criminals.”

Note: MCL 750.139(1) provides that a child under 16 years of age while under arrest, confinement, or conviction for any crime must not be:

- placed in any apartment or cell of any prison, or place of confinement with any adult under arrest, confinement, or conviction for a crime;
- permitted to remain in any court room during the trial of adults; or
- be transported with adults charged with or convicted of crime.

Any person who violates these provisions shall be guilty of a misdemeanor. MCL 750.139(3).

Jailing juveniles for contempt of court. MCR 3.928(C) states as follows:

“(C) **Contempt by Juvenile.** A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 30 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separate and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.”

3.8 Places of Detention for Alleged Status Offenders

MCL 712A.15(3) and (5) discuss places of detention for juveniles alleged to be status offenders (runaways, habitually disobedient, and/or truants).*

Pursuant to MCL 712A.15(3), a child taken into custody for being an alleged status offender and who is not under the court’s jurisdiction for a criminal offense must not be detained in any secure detention facility for juvenile offenders unless the court finds that the child willfully violated a court order and the court finds, after a hearing and on the record, that there is no less restrictive alternative more appropriate to the needs of the child.

*See Section 2.3 for a discussion of status offenses.

*Proceedings to enforce PPOs against minor respondents are discussed in Chapter 15.

The court may make the requisite findings following a probation violation hearing or contempt hearing. MCL 712A.15(3) adds that it does not apply to a child over 17 years of age against whom a supplemental petition alleging a PPO violation has been filed. The subsection does apply, however, to a juvenile under age 17 who is taken into custody as an alleged status offender and against whom a supplemental petition alleging a PPO violation has been filed. Thus, if such a juvenile is found to have violated a PPO following contempt proceedings, he or she may be detained in a secure facility.*

A provision of the Juvenile Justice & Delinquency Prevention Act, 42 USC 5633(a)(12)(A), makes federal funds available to states where status offenders cannot be detained in secure facilities unless they have violated valid court order. Federal regulations explain in detail the requirements for determining whether a valid court order exists and hearing requirements for violations of valid court orders. In general, 28 CFR 31.303(f)(3) requires the hearing at which the order was entered and the hearing on violation of the order to meet basic due process requirements, and allows a court to temporarily detain a juvenile pending a hearing on violation of the order. The required standard of proof at a juvenile probation revocation proceeding is “preponderance of the evidence.” *People v Belcher*, 143 Mich App 68, 72 (1985). Criminal contempt must be proven “beyond a reasonable doubt.” *In re Contempt of Papanos*, 143 Mich App 483, 488–99 (1985).

A status offense proceeding may be “bootstrapped” into a juvenile delinquency proceeding through use of the “juvenile court’s” contempt power. See MCL 712A.26, *In the Interest of Jane Doe*, 26 P3d 562, 568, 571 (Hawaii, 2001) (“juvenile court” may adjudicate status offenders for criminal contempt and securely detain them if the juvenile had sufficient notice of the order and the court considers less restrictive alternatives), and *In re GB*, 430 NE2d 1096, 1098-99 (Ill, 1981) (violation of family court’s order could be punished pursuant to its inherent contempt power rather than pursuant to the authority granted by the statutes governing juvenile proceedings).

Note: Use of secure detention for a status offender who has repeatedly violated court orders may be necessary for the juvenile’s safety and well-being. However, a court should also consider the emotional impact of being placed in secure detention and its financial cost.

MCL 712A.15(5) prohibits the detention of a child taken into custody for a status offense from being placed in “a cell or other secure area of any secure facility designed to incarcerate adults” unless one of the following applies:

“(a) A child is under the jurisdiction of the court pursuant to [MCL 712A.2(a)(1), criminal offenses] for an offense which, if committed by an adult, would be a felony.

“(b) A child is not less than 17 years of age and is under the jurisdiction of the court pursuant to a supplemental petition under [MCL 712A.2(h), PPO actions].”

Juveniles taken into custody as status offenders who are under the court’s jurisdiction for a misdemeanor offense may be placed in secure detention if it is the least restrictive alternative available, but they may not be jailed.

3.9 Places of Detention for Juveniles Whose Felony Cases Have Been Designated for Criminal Trial in Family Division

A juvenile under 17 years of age may be held in the county jail pending trial if the case has been designated for criminal trial by the court pursuant to MCL 712A.2d. The court must determine that there is probable cause that a felony was committed and that the juvenile committed the felony. MCL 712A.2(g) and MCL 764.27a(3). This occurs at the preliminary examination held by a Family Division judge. MCR 3.903(D)(5). Prior approval of the county sheriff is required, and the juvenile must be held physically separate from adults. MCL 712A.2(g) and MCL 764.27a(3). The court rule governing confinement of the juvenile following a preliminary examination in designated cases, MCR 3.953(G), provides that if the juvenile is under 17 years of age, he or she must be separated from adult prisoners by sight and sound unless otherwise ordered by the court, which is a more difficult standard to meet.*

*See Section 3.3(A), above, for useful definitions of separation by “sight” and “sound.”

MCL 764.27a(4) provides that the court, upon motion of a juvenile or individual under 17 years of age who is subject to confinement in the county jail, may, upon good cause shown, order the juvenile or individual to be confined as otherwise provided by law.

3.10 Places of Detention for Juveniles Charged Under the “Automatic Waiver” Statute

MCR 6.907(B)(1)–(3) list the places at which a juvenile may be temporarily detained pending arraignment in an “automatic waiver” case. If the prosecutor has authorized the filing of a complaint and warrant alleging a “specified juvenile violation” instead of approving the filing of a petition in the Family Division, a juvenile may, following apprehension, be detained pending arraignment:

Section 3.10

*See MCL 712A.16(2), which authorizes counties to establish detention facilities.

*See Sections 3.2 (“immediacy rule”) and 3.6, above (special adjournments in “automatic waiver” cases).

*See Section 3.3(A), above, for useful definitions of “sight” and “sound” separation of juveniles from adults.

“(1) in a juvenile facility operated by the county;*

“(2) in a regional juvenile detention facility operated by the state; or

“(3) in a facility operated by the family division of the circuit court with the consent of the family division or an order of a [circuit court, other than the family division].”

The juvenile placed in a detention home operated by the Family Division pending a decision by the prosecuting attorney to authorize the filing of a complaint and warrant in district court may remain there, with the Family Division’s consent, even after the prosecuting attorney’s decision to proceed under the “automatic waiver” statute.* Under MCR 6.907(B)(3), however, if the Family Division does not consent, or if the Criminal Division does not order the juvenile to remain in the court-operated facility, the juvenile must be moved to a non-court-operated facility. See Staff Comment following Subchapter 6.900 (“H. Detention”). The Family Division must comply if the Criminal Division orders the juvenile to remain in the Family Division-operated facility pending trial. MCL 712A.2(f).

If no juvenile facility is reasonably available and if it is apparent that the juvenile may not otherwise be safely detained, the magistrate may, without a hearing, order that the juvenile be lodged pending arraignment in a facility used to incarcerate adults. The juvenile must be kept separate from adult prisoners as required by law. MCR 6.907(B).*

MCR 6.909(B)(1)–(4) deal with confinement after arraignment. These rules, which are similar to those applicable to pre-arraignment detention, state as follows:

“(1) *Juvenile Facility*. Except as provided in subrule (B)(2) and in MCR 6.907(B) [see above], a juvenile charged with a crime and not released must be placed in a juvenile facility while awaiting trial and, if necessary, sentencing, rather than being placed in a jail or similar facility designed and used to incarcerate adult prisoners.

“(2) *Jailing of Juveniles; Restricted*. On motion of a prosecuting attorney or a superintendent of a juvenile facility where the juvenile is detained, the magistrate or court may order the juvenile confined in a jail or similar facility designed and used to incarcerate adult prisoners upon a showing that

(a) the juvenile’s habits or conduct are considered a menace to other juveniles; or

(b) the juvenile may not otherwise be safely detained in a juvenile facility.

“(3) *Family Division Operated Facility*. The juvenile shall not be placed in an institution operated by the family division of circuit court except with the consent of the family division or on order of a [circuit court, other than the family division].

“(4) *Separate Custody of Juvenile*. The juvenile in custody or detention must be maintained separately from the adult prisoners or adult accused as required by MCL 764.27a.”

MCL 764.27a(3) allows a juvenile or individual less than 17 years of age who is under the jurisdiction of the circuit court for committing a felony to be confined in a county jail pending trial. Prior approval of the county sheriff is required, and the juvenile must be held physically separate from adults. In addition, the court, upon motion of a juvenile or individual under 17 years of age who is subject to confinement, may, upon good cause shown, order the juvenile or individual to be confined as otherwise provided by law. MCL 764.27a(4).

3.11 Places of Detention for Juveniles Charged Under the “Traditional Waiver” Statute

Neither MCL 712A.4 nor MCR 3.950 provides distinct rules for detention of juveniles prior to waiver; thus, the rules applicable to felony delinquency cases apply.* See MCR 3.901(B)(2) (MCR 3.931–3.950 apply only to delinquency proceedings; both the pretrial detention rule, MCR 3.935, and the “traditional” waiver rule are included in these provisions). However, following the grant of a waiver motion in a “traditional” waiver case, the juvenile is transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants. Juveniles waived under the “traditional” waiver statute need not be kept separate and apart from adult prisoners. MCR 3.950(E)(2).

*See Section 3.7, above, for discussion of these rules.

3.12 Table Summarizing Places of Detention for Juveniles

Type of Proceeding	Places Where Juvenile May Be Detained	Authority
Status Offense Cases	<p>An alleged status offender may be detained in a secure juvenile detention facility only if the court finds that the juvenile has willfully violated a court order and, after a hearing on the record, the court finds that there is no less restrictive alternative appropriate to the juvenile's needs.</p> <p>An alleged status offender must not be detained in a secure facility designed to incarcerate adults unless the juvenile is under the court's jurisdiction for a felony, or the juvenile is over 17 years old and under the court's jurisdiction for an alleged violation of a PPO.</p>	<p>MCL 712A.15(3) and (5)</p> <p>See Section 3.8</p>
Misdemeanor & Felony Delinquency Cases	<p>A juvenile may be detained in a secure juvenile detention facility, but only if the court determines that such a facility is the least restrictive environment that will meet the needs of the juvenile and the public.</p> <p>A juvenile may be detained in a jail or adult detention facility if the juvenile is 15 years old or older and his or her habits or conduct are considered a menace to other children, or he or she might not otherwise be safely detained. The juvenile must be placed in a room or ward separate from adults, and for a period not to exceed 30 days, unless longer detention is necessary for service of process. The juvenile must be separated by sight and sound from adult prisoners.</p>	<p>MCR 3.935(D)(4), MCL 712A.15, and MCL 712A.16.</p> <p>See Section 3.7</p> <p>MCL 712A.16(1) and MCL 764.27a(2)</p> <p>See Section 3.7</p>

Type of Proceeding	Places Where Juvenile May Be Detained	Authority
Designated Case Proceedings	<p>Prior to a preliminary examination, see the rules for felony and misdemeanor delinquency cases, above.</p> <p>After a preliminary examination, a juvenile may be detained in the county jail if the court finds that there is probable cause that a felony was committed and that the juvenile committed it. Prior approval of the sheriff is required. MCL 764.27a(3) requires the juvenile to be held physically separate from adults. MCR 3.953(G) provides that juveniles placed in jail must be separated by sight and sound from adult prisoners.</p>	<p>MCL 712A.2(g), MCL 764.27a(3), and MCR 3.953(G).</p> <p>See Section 3.9</p>
“Automatic Waiver” Cases	<p>Prior to arraignment, a juvenile may be detained in a county or regional juvenile facility, or in a Family Division-operated facility with the consent of the Family Division or pursuant to an order of the Criminal Division. If no juvenile facility is available or if the juvenile may not otherwise be safely detained, the court may order a juvenile detained in an adult facility. The juvenile must then be kept physically separate from adults.</p> <p>Following arraignment, the juvenile must be detained in a juvenile facility, unless the juvenile was placed in an adult facility before arraignment pursuant to the rules above, or unless upon motion of the prosecutor or superintendent of a juvenile facility housing the juvenile, the court finds that the juvenile’s habits or conduct are considered a menace to other children, or the juvenile might not otherwise be safely detained. The juvenile must then be kept physically separate from adults.</p>	<p>MCR 6.907(B)(1)–(3) and MCL 712A.2(f)</p> <p>See Section 3.10</p> <p>MCR 6.909(B)(1)–(4) and MCL 764.27a(3)</p> <p>See Section 3.10</p>
“Traditional Waiver” Cases	<p>Prior to waiver, see the rules for felony delinquency cases, above.</p> <p>Following waiver, the juvenile may be detained in the same manner as an adult criminal defendant and is not required to be kept separate from adult prisoners.</p>	<p>MCR 3.950(E)(2).</p> <p>See Section 3.11</p>

3.13 Requirements of the Crime Victim's Rights Act

*See Section 4.3 for discussion of the applicability of the Crime Victim's Rights Act to delinquency proceedings. For more detailed information on the Crime Victim's Rights Act, see Miller, *Crime Victim Rights Manual* (MJI, 2001).

MCL 780.782 requires the law enforcement agency investigating a juvenile offense* to provide a victim with an opportunity to request notice of the juvenile's arrest, subsequent release, or both. If the victim requests such notice, the law enforcement agency must promptly provide it. In addition, the victim must be provided with notice of the availability of pretrial release for the juvenile and the telephone number of the appropriate detention facility so that the victim may call to find out if the juvenile has been released.

If a juvenile is placed in a juvenile facility following the preliminary hearing in a juvenile delinquency case, the prosecuting attorney or court must provide the victim with the telephone number of the juvenile facility in which the juvenile is detained. The victim of a juvenile offense may contact the juvenile facility to determine whether the juvenile has been released. Moreover, if the victim has requested, the law enforcement agency must notify the victim of the juvenile's arrest, pretrial release, or both. The relevant provision states:

"If the juvenile has been placed in a juvenile facility, not later than 48 hours after the preliminary hearing of that juvenile for a juvenile offense, the prosecuting attorney or, pursuant to an agreement under [MCL 780.798a], the court shall give to the victim the telephone number of the juvenile facility and notice that the victim may contact the juvenile facility to determine whether the juvenile has been released from custody. The law enforcement agency having responsibility for investigating the crime shall promptly notify the victim of the arrest or pretrial release of the juvenile, or both, if the victim requests or has requested that information. If the juvenile is released from custody by the sheriff or juvenile facility, the sheriff or juvenile facility shall notify the law enforcement agency having responsibility for investigating the crime." MCL 780.785(1).

Note: In juvenile delinquency cases, MCL 780.798a authorizes the prosecuting attorney to enter a written agreement that the court will perform many of the prosecutor's notification duties if the court performed those functions before May 1, 1994. Currently, the court in five Michigan counties (Ionia, Marquette, Oceana, Saginaw, and Monroe) performs these duties.